

# ITEL

## IteI Rail Corporation

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000

October 12, 1987

RECORDATION NO. 8770-H Filed 1229

OCT 19 1987 -10 47 AM

Hon. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

INTERSTATE COMMERCE COMMISSION

Date 10/19/87

Fee \$ 20.00

ICC Washington, D. C.

Re: Amendment No. 3 dated October 8, 1987, to the Lease Agreement dated as of February 2, 1977. between SSI Rail Corp. and Chattahoochee Industrial Railroad

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$20 recordation fee.

Please record this Amendment under the Lease Agreement dated as of February 2, 1977, between SSI Rail Corp. and Chattahoochee Industrial Railroad, which was filed with the ICC on April 1, 1977, under Recordation No. 8770-A. Please cross-index this Amendment to the Equipment Trust Agreement dated January 1, 1982, between IteI Corporation and First Security Bank of Utah, N.A., which was filed with the ICC on September 23, 1983, under Recordation No. 14165.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Chattahoochee Industrial Railroad (Lessee)  
P. O. Box 253  
Cedar Springs, Georgia 31732

The Amendment adds to the Lease Agreement fifty (50) 50'7", XP boxcars bearing reporting marks CIRR 95001-95050.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*patricia schumacker*

Patricia Schumacker  
Legal Department

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Patricia Schumacher  
Local Department  
Itel Rail Corp  
25 Francisco Street  
San Francisco, CA 94133

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/1/77 at 10:45AM, and assigned recordation number(s). 377-F, 5672-F, 14774-R & 9073-Q

Sincerely yours,

*Noreta R. McGee*  
Secretary

Enclosure(s)

09/24/87

RECORDATION NO. 8770-H FILE 1425

OCT 19 1987 - 10 45 AM

AMENDMENT NO. 3

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 3 (the "Amendment") to that certain Lease Agreement dated as of February 14, 1977, as amended, (the "Agreement") between SSI Rail Corp., as lessor and CHATTAHOOCHEE INDUSTRIAL RAILROAD as lessee ("Lessee") is made this 8th day of October, 1987, by and between ITEL RAIL CORPORATION as successor in interest to SSI Rail Corp. ("Itel Rail") and Lessee.

RECITALS:

- A. Itel Rail and Lessee are parties to the Agreement pursuant to which one hundred sixteen (116) boxcars bearing the reporting marks from within the series CIRR 90001-90100 and CIRR 94000-94015 (together with the boxcars described on the Equipment Schedule attached hereto, the "Boxcars") have been delivered by Itel Rail to Lessee.
- B. Itel Rail and Lessee desire to add to the Agreement the fifty (50) boxcars set forth on the Equipment Schedule No. 4 attached hereto.

NOW, THEREFORE, the parties hereto agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment. This Amendment shall take effect upon its full execution.
- 2. Equipment Schedule No. 4, attached hereto, which references fifty (50) Boxcars bearing the reporting marks CIRR 95001-95050 (the "50 Cars"), shall be added to and made part of the Agreement.
- 3. With respect to the 50 Cars only, Section 2 of the Agreement shall be deleted in its entirety and shall be replaced by the following:

"2. Term

The term of the Agreement with respect to each Boxcar described on Equipment Schedule No. 4 shall commence at 12 noon on the date and at the location that such Boxcar is remarked pursuant to Subsection 3.A. ('Delivery'), and shall expire as to all the Boxcars described on Equipment Schedule No. 4, five (5) years from the date on which the first Boxcar on such Equipment Schedule No. 4 was remarked (the 'Term')."

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., TRUSTEE, UNDER A LEASE ASSIGNMENT.

4. With respect to the 50 Cars only, Subsections 3.A. and 3.B. of the Agreement as amended by Amendment No. 2 dated May 27, 1983, ("Amendment No. 2") to the Agreement shall apply with the following modifications:
- a. The third and fourth sentences of such Subsection 3.A. shall be deleted in their entirety and shall be replaced by: "Itel Rail shall, at its initial expense and subject to the recovery of the cost incurred in initially remarking and placing such Boxcar into service, including transportation, not to exceed one thousand one hundred thirty-eight dollars (\$1,138.00) per Boxcar ['Initial Delivery Expenses'] as provided in Subsection 6.B., remark each Boxcar with the railroad markings of Lessee in compliance with all applicable regulations."
  - b. The sixth sentence of such Subsection 3.A. shall be deleted in its entirety.
  - c. A new sentence is added to the end of such Subsection 3.A. as follows:


"Upon the remark of each of the 50 Cars on Equipment Schedule No. 4 as set forth herein, such Boxcar shall be an excluded boxcar as defined in ICC Ex Parte No. 346 Sub-No. 19 served September 12, 1986 ('Excluded Boxcar'). At Lessee's option, any Boxcar which replaces one of the 50 Cars as set forth in Subsection 6.H. hereinbelow, shall be an Excluded Boxcar."
  - d. The words "... subsequent to the date of Amendment No. 2 to the Agreement..." in Subsection 3.B. shall be deleted and replaced by the words "... subsequent to the date of Amendment No. 3 to the Agreement..." each time they appear.
5. With respect to the 50 Cars only, Subsections 6.E. and 6.F. of the Agreement, as amended by Amendment No. 2 to the Agreement, shall apply and Subsections 6.A., 6.B., 6.C. and 6.D. as amended in Section 6 of Amendment No. 2, shall be modified as follows:
- a. Subsection 6.A. (i) shall be modified by adding the words "calculated at the Revenue Rates described in Subsection 6.I. of the Agreement as added by Amendment No. 3 to the Agreement," after the words "per diem and mileage."
  - b. A new Subsection 6.A. (iii) shall be added, as follows:

**"6.A.(iii)** The 'Base Rental' is defined as the Revenues the Boxcars would have earned in any calendar year or applicable portion thereof in the aggregate at a Utilization Rate of  
."
  - c. The words "... upon the Initial Loading of such Boxcar..." in Subsection 6.B. shall be deleted and replaced by "... only at such time that Itel Rail notifies Lessee in writing that Itel Rail has recovered the Initial Delivery Expenses for such Boxcar..." and a new sentence shall be added: "Itel Rail shall receive all Revenues earned by each Boxcar until such Initial Delivery Expenses have been recovered."

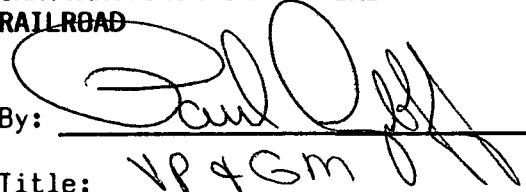
- d. Subsection 6.C. shall be deleted in its entirety and shall be replaced by the following:
- "6.C. Lessee agrees to pay the following rent to Itel Rail for the use of the Boxcars:
- (i) In the event Revenues earned in any calendar year or applicable portion thereof are equal to or less than the Base Rental, Itel Rail shall receive a sum equal to
  - (ii) In the event Revenues earned in any calendar year or applicable portion thereof exceed the Base Rental, Itel Rail shall receive an amount equal to the Base Rental and Lessee shall retain an amount equal to )  
of all Revenues in excess of the Base Rental."
- e. The words "... as Itel Rail deems necessary..." in the first sentence of Subsection 6.D.(ii) shall be deleted and replaced by the words "...as Itel Rail deems reasonably necessary..."
6. With respect to the 50 Cars only, a new Subsection 6.H. shall be added to Section 6 as amended by Amendment No. 2, as follows: "Itel Rail may, at its expense, replace any or all of the Boxcars with boxcars of the same description as set forth on Equipment Schedule No. 4 attached hereto upon prior written notice from Itel Rail to Lessee in the event that such Boxcar or Boxcars have been destroyed, or that any lessor, any owner or secured party under any financing agreement with respect to such Boxcar or Boxcars has directed that such Boxcar or Boxcars be immediately returned to such party, or that Itel Rail elects not to extend the term of such financing agreement."
7. With respect to the Boxcars bearing the reporting marks CIRR 90001-90100, CIRR 94000-94015 and to the 50 Cars, a new Subsection 6.I. shall be added to the Agreement, as follows:
- "In the event that Itel Rail shall receive or earn for the use of any Boxcars, revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified for excluded boxcars as provided in paragraph (c)(3) of 49 C.F.R. 1039.14 as appended to ICC Ex Parte No. 346 Sub-No. 19 served September 12, 1986 ('Revenue Rates'), as a result of any action or omission by Lessee, then Lessee shall pay to Itel Rail within ten (10) days of Itel Rail's request, an amount equal to the difference between the Revenues such Boxcars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Boxcars."
8. The words "... entered into by SSI in connection with the acquisition of the Boxcars ..." in the second sentence of Subsection 7.A. of the Agreement are replaced by the words "... pursuant to which Itel Rail's obligations thereunder are or become secured by the Boxcars...."

9. With respect to the 50 Cars only, the words "... to repaint the Boxcars and place thereon the markings and name or other insignia..." in the last sentence of Section 9 of the Agreement shall be deleted and replaced by the words "... to place on the Boxcars the reporting marks..."
10. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.
11. This Amendment may be executed by the parties hereto in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

By:   
Title: President  
Date: 10/8/87

CHATTAHOOCHEE INDUSTRIAL  
RAILROAD

By:   
Title: VP & GM  
Date: 9-28-87

STATE OF CALIFORNIA       )  
                                      ) ss:  
COUNTY OF SAN FRANCISCO )

On this 8<sup>th</sup> day of October, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 3 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF GEORGIA       )  
                                      ) ss:  
COUNTY OF EARLY       )

On this 28<sup>th</sup> day of September, 1987, before me personally appeared Paul Angeloff, to me personally known, who being by me duly sworn says that such person is Vice President and General Manager of Chattahoochee Industrial Railroad, that such person is authorized by said corporation's board of directors to generally sign on behalf of said corporation, that the foregoing Amendment No. 3 was signed on behalf of said corporation, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Martha DeLeon  
Notary Public

My Commission expires March 22, 1988



EQUIPMENT SCHEDULE NO. 4

Itel Rail Corporation hereby leases the following Boxcars to Chattahoochee Industrial Railroad subject to the terms and conditions of that certain Lease Agreement dated as of February 14, 1977, as amended.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XP	50' Boxcars, Steel, Nailable Steel Floor, Cushion Underframe	CIRR 95001- 95050	50'7"	9'6"	11'	10'	50

ITEL RAIL CORPORATION

By: 

Title: President

Date: 10/8/87

CHATTAHOOCHEE INDUSTRIAL RAILROAD

By: 

Title: VP & GM

Date: 9-28-87



STATE OF CALIFORNIA       )  
                                  ) ss:  
COUNTY OF SAN FRANCISCO )

On this 28<sup>th</sup> day of October, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Equipment Schedule No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF GEORGIA       )  
                                  ) ss:  
COUNTY OF EARLY       )

On this 28<sup>th</sup> day of September, 1987, before me personally appeared Paul Angeloff, to me personally known, who being by me duly sworn says that such person is Vice President and General Manager of Chattahoochee Industrial Railroad, that such person is authorized by said corporation's board of directors to generally sign on behalf of said corporation, that the foregoing Equipment Schedule No. 4 was signed on behalf of said corporation, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Martha Odum  
Notary Public

My Commission expires March 22, 1988